BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

To: The Federal Communications Commission, *en banc*

ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.
COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Dennis O'Hara, President
Brian D. Gilmore, Chairman,
Government Relations Committee
of the Board of Directors
ASSOCIATION OF TELESERVICES
INTERNATIONAL, INC.
12 Academy Avenue
Atkinson, NH 03811

Kenneth E. Hardman
2154 Wisconsin Avenue, NW, Ste 250
Washington, DC 20554
Telephone: (202) 223-3772
Facsimile: (202) 315-3587
kenhardman@att.net

Attorney for Association of TeleServices International, Inc.

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SUMMARY

ATSI members are assigned an average of 2,000 telephone numbers each for use in their operations, which typically generate less than three minutes of network usage per day and, as a result, currently pay less than $0.10 per number per month in USF assessments. Any USF contribution methodology based on a uniform charge per telephone number across all telecommunications industry segments, such as set forth in Attachment "B" and (at least for residential subscribers) in Attachments "A" and "C," would result in a drastic and onerous rate increase for the Private Sector Critical Response Center (PSCRC) industry (also known as the Telephone Answering Service industry).

Such a contribution methodology simply cannot be squared with the "equitable and nondiscriminatory" standard of Section 254 of the Act; and, as applied to PSCRCs, it plainly violates principles of competitive neutrality embedded in the "equitable and nondiscriminatory" statutory standard. This is so because telephone companies do not reliably deliver Simplified Message Desk Interface (SMDI) data to independent PSCRCS, forcing PSCRCs instead to use "proxy" telephone numbers in their operations to accurately identify their subscribers' redirected telephone calls. Accordingly, a substantial USF "surtax" on telephone numbers such as proposed in the Attachments would artificially and improperly create a substantial price advance for telephone companies in the provision of telemessaging service.

Moreover, and contrary to the analysis contained in the proposals, no persuasive case -- much less a compelling one -- has been made as to the need for substantial modification of the contribution methodology, whether on factual, policy or legal grounds. The facts show that it has been the growth in USF disbursements that has caused the rise in USF contribution factors, not that the contribution methodology is "broken." Bundling issues have already been addressed

through the use of "safe harbor" allocations; and the Commission's studied failure to clearly distinguish between "telecommunications" and "information" is not a rational justification for making wholesale changes to the contribution methodology.

Further, the added administrative convenience of a numbers-based methodology for a handful of large telephone companies does not offset or otherwise justify subjecting untold additional companies to direct contribution obligations and resulting new regulatory burdens, as the Attachments would do. This is especially significant for ATSI members, who likely would be converted into direct USF contributors under the "B" proposal, and ptentially so under the "A" and "C" proposals as well.

From a legal standpoint, the Commission's general discretion to design a USF contribution methodology must give way to Congress' specific design in Section 254, which the Commission initially sought to implement when it established the current system of USF contributions based on interstate end-user revenues. It also is plainly inadequate to construe the "equitable and nondiscriminatory" standard of Section 254 to require different industry groups to contribute *something* to USF; instead, the relevant issue, which the Attachments do not attempt to address, is how much different industry groups should be required to contribute compared to others. The current system recognizes the distinction by using revenues as a proxy for relative usage; the proposals in the Attachments would throw this principle overboard without any explanation as to why it is no longer valid.

Accordingly, the Commission should defer any such consideration of contribution methodology until modifications to USF disbursements and to intercarrier compensation principles have been implemented and evaluated. If at that time the Commission properly determines that significant modifications to the USF contribution methodology are still required in the public interest, it should propose a specific methodology based on contributions to the network in a second further notice of proposed rulemaking, so that interested parties will have a meaningful opportunity to comment on a concrete connections-based proposal prior to its adoption by the Commission.

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To: The Federal Communications Commission, *en banc*

ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.
COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

THE ASSOCIATION OF TELESERVICES INTERNATIONAL, INC. (ATSI), by its President, its Chairman of the Government Relations Committee of the Board of Directors and by its attorney, respectfully submits its comments to the Federal Communications Commission in response to the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (the "FNPR") in the captioned proceedings, FCC 08-262, adopted and released November 5, 2008, and published at 73 Fed. Reg. 66821 (November 12, 2008). For the reasons explained more fully below, ATSI strongly urges the Commission *not* to address modification of the Universal Service Fund (USF) contribution methodology at this time. ATSI urges the Commission instead to defer such modification until distribution-side reforms have been implemented and a reasonable demonstration can be made that modification of the USF contribution methodology is nevertheless necessary in the public interest. Further, at such time, if at all, the Commission decides to significantly modify USF contribution methodology, it should issue a second further notice of proposed rulemaking setting forth a specific contribution methodology based on connections, upon which interested parties have a meaningful opportunity to comment prior to being adopted by the Commission.

As its comments in response to the FNPR, ATSI respectfully states:

Introduction and Background

Proposals to modify the USF contribution methodology have been offered and debated for a number of years. In a 2001 Notice of Proposed Rulemaking issued in CC Docket No. 96-45, *et al.*, the Commission suggested that the USF contribution methodology adopted in the aftermath of the Telecommunications Act of 1996 may need to be simplified and streamlined, citing the entry of the RBOCs into the long distance market and resultant declining revenues of the existing interexchange carriers, the growth of mobile telephony, the advent of Internet Protocol telephony and the increased "bundling" of telecommunications services.[1]

In a subsequent Further Notice of Proposed Rulemaking, issued in early 2002 without taking any remedial action in response to comments on the 2001 NPRM,[2] the Commission expressed similar concerns, citing such factors as declining revenues of interexchange carriers, the

1 *In the Matter of Federal-State Joint Board on Universal Service, et al.* (Notice of Proposed Rulemaking), CC Docket No. 96-45, *et al.*, FCC 01-145, 16 FCC Rcd 9892 (FCC 2001), at ¶¶3-4.
2 *In the Matter of Federal-State Joint Board on Universal Service, et al.* (Further Notice of Proposed Rulemaking and Report and Order), CC Docket No. 96-45, *et al.*, FCC 02-329, 17 FCC Rcd 3752 (FCC 2002),

increasing use of mobile telephony for interstate calls, the blurring of distinctions between telecommunications and non-telecommunications services, and increased bundling of telecommunications services.[3] The Commission sought public comment to ensure the sufficiency and stability of the USF, to provide certainty to market participants and to minimize the costs of regulatory compliance.[4] At that time the Commission suggested that a connections-based assessment methodology appeared to be the most promising way to achieve its objectives.[5]

In December 2002, the Commission issued an order adopting limited modifications to the USF contribution rules and requesting comment on additional issues, including three different variations of a connections-based USF contribution methodology.[6] The modifications adopted in the December 2002 order included increasing the mobile telephony "safe harbor" interstate revenue allocation from 15% to 28.5%, adopting an "all-or-nothing" rule requiring affiliated CMRS carriers to use the same method for allocating interstate revenues, and changing the quarterly revenues reported for USF contribution computation purposes from historical to forecast quarterly revenues.[7] The latter change was necessary in the Commission's view in order to "promote competitive neutrality".[8]

The Commission's next action was to issue an "interim" order in June 2006 increasing the interstate "safe harbor" allocation for mobile telephony carriers from 28.5% to 37.1%, adopting new requirements for mobile telephony carriers relying on traffic studies to determine inter-

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[3] *Id.* at ¶¶7-14.
[4] *Id.* at ¶¶15-17.
[5] *Id.*
[6] *In the Matter of Federal-State Joint Board on Universal Service, et al.* (Report and Order and Second Further Notice of Proposed Rulemaking), CC Docket No. 96-45, *et al.*, FCC 02-329, adopted December 12, 2002 and released December 13, 2002. Later, the Commission also released a staff study purporting to show the revenue effect on different industry segments arising from converting to a connection-based methodology; and it requested comments on the staff study as part of response of interested parties to the Second Further Notice of Proposed Rulemaking.
[7] *Id.* at ¶¶20-39.
[8] *Id.* at ¶29.

state revenues, requiring interconnected VoIP service providers to contribute to the Universal Service Fund and establishing a 64.9% "safe harbor" interstate allocation for VoIP service providers.[9] The Commission declined to adopt more fundamental modifications to the contribution methodology, despite claims at that time by the large telephone companies that the current system is "broken," acknowledging that "a consensus approach to reform has not developed."[10]

The Commission's June 2006 order is its last word on the subject of USF contribution methodology until issuance of the current FNPR. The FNPR does not claim that a "consensus approach to reform" has developed in the intervening months since the June 2006 order, and does not itself propose specific changes to the USF contribution methodology. Rather, the FNPR attaches three alternative "draft" orders (Attachments "A," "B" and "C") that were circulated to the commissioners for a vote in connection with a meeting scheduled for November 4, 2008.

Insofar as USF contribution methodology is concerned, there is little difference between the proposals in Attachments "A" and "C". Both would immediately impose a fixed $1.00 per number per month USF contribution obligation on "residential" service subscribers with "Assessable [Telephone] Numbers." The only exceptions would be for prepaid wireless and lifeline subscribers, although subscribers to stand-alone voicemail services also would be exempted under the "A" proposal. "Business" service subscribers would continue to pay under the current system under both the "A" and "C" proposals while a rulemaking is conducted to determine a suitable contribution methodology for them based on connections to the network. No proposed rules are attached to either proposal to inform interested parties as to the specific nature of the connection-based contribution methodology under consideration.

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9 *In the Matter of Universal Service Contribution Methodology, et al.* (Report and Order and Notice of Proposed Rulemaking), WC Docket No. 06-122, *et al.*, FCC 06-94, 21 FCC Rcd 7518 (FCC 2006) (subsequent history omitted).

10 *Id.* at ¶21.

The proposal in Attachment "B" would impose an immediate USF contribution obligation of $0.85 per number per month on all subscribers with an "Assessable Number," both residential and business. "Business" service subscribers with "Assessable Connections" also would be assessed a $5.00 per month USF contribution obligation for each dedicated connection with a speed of 64 kbps or less, and $35.00 per month for each dedicated connection with a speed greater than 64 kbps. The "B" proposal essentially parrots a proposal advanced jointly by AT&T and Verizon on October 20, 2008, after they concluded that the "A" proposal circulated by the Chairman on October 15, 2008 "would perpetuate all of the problems with the current mechanism" while at the same time "also inject additional complexity by requiring providers to distinguish between residential and business telephone numbers and revenues."[11]

ATSI (www.atsi.org) is an international trade association established in 1942 by and for entrepreneurs in the Inbound TeleServices business, also sometimes referred to as Private Sector Critical Response Centers (PSCRCs) or Telephone Answering Services (TASs). ATSI members typically are small, locally owned and operated businesses providing a wide variety of services to businesses, governmental agencies, and local emergency respondents within their local communities. Entrepreneurial in their approach to business issues, ATSI members offer innovative solutions to business problems and essential response services in disaster situations. PSCRCs serve over 1.4 million business and government customers; including doctors, emergency response centers, public utilities, public safety offices, local, state, and federal government offices, rape and suicide crisis centers, and Red Cross emergency centers. PSCRC agents assist neighbors in some 3.6 billion inbound call transactions annually.

[11] *Ex Parte Letter dated October 20, 2008, from Mary L. Henze (AT&T) and Kathleen Grillo (Verizon),* WC Docket No. 06-122 & CC Docket No. 96-45, at p. 1.

ATSI members are substantial users of telephone numbers,[12] typically assigned to the PSCRC in blocks of 100 or 1,000 by its serving ILEC or CLEC for a monthly fee. According to data collected by ATSI, its members are assigned an average of approximately 2,000 telephone numbers each, and the USF contributions currently paid by ATSI members translate into less than $0.10 per number per month. Telephone calls associated with telephone numbers utilized by a typical ATSI member overwhelmingly are jurisdictionally intrastate, not interstate; and the telephone numbers typically generate less than three minutes of usage per day, compared to an average of approximately 25-30 minutes of usage per day it is commonly understood that conventional wireline and wireless telephone numbers generate.[13]

Additionally, the telephone numbers assigned to ATSI members characteristically are used for internal network signaling or call distribution purposes, rather than for the origination or termination of telephone calls by the world at large.[14] If ATSI members remain customers of USF contributors rather than being converted into direct USF contributors, ATSI also believes that its members clearly would be classified as "business" service subscribers under the "A" and "C" proposals attached to the FNPR.

The financial impact of either the "A" or "C" proposal on ATSI members cannot be determined at this time, because there is no meaningful information disclosed as to the nature of the USF contribution that would be imposed on "business" service subscribers if either of those proposals were implemented. However, there is no doubt that any "Numbers" based contribution methodology similar to the proposal set forth in Attachment "B," either on a stand-alone basis or

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12 These numbers are predominantly local Direct Inward Dial (DID) numbers, but also include quantities of toll-free (8XX) telephone numbers.

13 CTIA data show, e.g., that postpaid wireless subscribers generated an average of 826 minutes of usage for the month of December 2007. *See* FNPR at Attachment A & ¶138, p. A-60.

14 The DID numbers thus are functionally similar to the numbers described in ¶123 of the "A" proposal that are excluded from the definition of "Assessable Number" and, hence, from USF contribution obligations. Nonetheless, they do not meet all of the other terms and conditions set forth in ¶123 for such exclusion.

as part of a hybrid "Numbers" and connections methodology such as embodied in Attachment "B," would result in a drastic and onerous rate increase for ATSI members. Moreover, it appears that ATSI members may well be converted into direct contributors to USF under the "B" proposal, and quite possibly also under any of the proposals set forth in the Attachments. ATSI thus has a direct and substantial interest in any proposal considered by the Commission for modifying the current USF contribution methodology.

Summary of Position

ATSI respectfully submits, in summary, that the Commission should not at this time consider *any* significant modifications to the USF contribution methodology, such as represented by any of the proposals attached to the FNPR, and, further, should not consider any such modifications at least until the distribution-side issues have been resolved and implemented. Contrary to the analysis contained in the proposals, no persuasive -- much less compelling -- case has been made as to the need for substantial modification of the contribution methodology, whether on factual, policy or legal grounds. Moreover, it would stand rational decision-making on its head for the Commission to even consider doing so before it has determined what changes to USF revenue requirements will arise from, and after implementation of, modifications now under consideration to USF disbursements and to principles of intercarrier compensation.

Accordingly, when the Commission next considers the issues originally scheduled for a vote on November 4, 2008, it should address no more than USF distribution-side issues and intercarrier compensation reform, and should not consider modifications to the USF contribution methodology. Should the Commission nonetheless insist upon addressing USF contribution methodology issues at the same time, the most it should do with respect to modification of contribution methodology is to initiate a second notice of proposed rulemaking containing a specific proposal for implementing a connection-based contribution methodology for "business" services such as subscribed to by ATSI members.

Comments on FNPR

ATSI respectfully submits that no modifications to the USF contribution methodology should be considered at this time because the "analysis" and "justification" set forth in the Attachments to the FNPR fall far short of adequately supporting the wholesale changes that those attachments would bring about.[15] As an initial matter, ATSI points out that the foundational claim in the Attachments, that that the current contribution system is "broken,"[16] is at best result-oriented rhetoric rather than reasoned analysis. The decline in assessable revenues from $79.0 billion in 2000 to $74.5 billion in 2006, cited and relied upon in the Attachments,[17] is only a 5.7% decline over a six-year period. On its face that hardly constitutes a "breakdown" of the current contribution system. Quite to the contrary, to generate the same contribution of $4.5 billion in 2006 that was needed in 2000, the contribution factor would have increased only from the 5.9% factor used in the first quarter of 2000 to a 6.0% contribution factor in 2006. Again, that hardly constitutes a "breakdown" of the current contribution system.

Moreover, ending the comparison with 2006, as the Attachments do, does not fairly account for the modifications adopted in June 2006 increasing the mobile telephony "safe harbor" interstate allocation to 37.1% from 28.5%, and requiring interconnected VoIP providers to contribute to USF for the first time, using a 69.4% "safe harbor" interstate allocation. Those modifications were expressly designed to increase USF contributions and were not implemented at all

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15 The basic analysis and argument in the Attachments in favor of change are largely identical among all three of the proposals. *Compare* Attachment A, ¶¶97-114, pp. A-42-A-50, *with* Attachment B, ¶¶44-61, pp. B-17-B-25, *and* Attachment C, ¶¶93-110, pp. C-41-C-49. For simplicity, ATSI will refer hereinafter only to the discussion in Attachment A and not to the parallel discussions in Attachments B and C.

16 Attachment A, ¶97, p. A-42.

17 *Id.* at ¶94, p. A-41.

until the fourth quarter of 2006. As a result, the financial impact of the 2006 modifications is not fairly reflected in the 2006 revenues cited in the proposals, further undercutting any reasonable claim that the current USF contribution system is "broken".

Instead, the part of USF that truly may be "broken" is the USF disbursements. As the analysis in the proposals concede, USF disbursements grew from $4.5 billion in 2000 to over $6.6 billion in 2006, almost *150%* of the 2000 total. If the increased USF disbursements were warranted and in the public interest, they do *not* suggest that the contribution system is "broken". Rather, in such case they would simply mean that the USF program is relatively broader and more expensive in 2006 than in 2000, and therefore that it was necessary to increase the contribution factor in order to generate the increased revenues needed to pay for the more expensive 2006 USF program.

What almost everyone understands, however, is that the increased USF disbursements from 2000 to 2006 were *not* altogether warranted and in the public interest, although there obviously is sharp disagreement as to which portions were warranted and in the public interest and which portions were not. The point here is that what the relevant facts show is *not* that the USF contribution methodology is "broken," as claimed in the Attachments, but rather that the USF disbursements need to be scrutinized and fixed as necessary. Under these circumstances, it is absolutely irrational to use the set of problems on the distribution side as justification for modifying the *contribution* methodology.

In this regard, ATSI notes that the Attachments include sometimes widely varying proposals for significantly modifying USF disbursement rules, including caps on ILEC high cost disbursements, phase-out of ETC high cost support over five years, elimination of the "identical support" rule, and use of negative auctions, as well as for substantial changes to principles of intercarrier compensation. The changes to USF disbursements obviously are intended to substantially *reduce* them over time, some of which could be offset by the proposed changes in intercarrier compensation. All of these changes are highly controversial, and the extent to which they ultimately are adopted or abandoned will have a substantial impact on USF revenue requirements in the future. Again, under these circumstances, the rational approach to USF reform is to first address and implement necessary modifications to USF disbursements, before attempting to determine whether any changes are necessary to the USF contribution methodology.

The second foundational predicate in the Attachments purporting to justify modifying the USF contribution methodology is the claim that "interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services."[18] The statement may be true as far as it goes, but it does *not*, upon analysis, justify the sweeping changes the proposals seek to implement.

The bundling of intrastate and interstate service packages has already been addressed by the Commission through the adoption of "safe harbor" interstate revenue allocations. If a "safe harbor" allocation is still needed for wireline unlimited calling plans (which is not at all clear in light of the call records routinely maintained by telephone companies), the Commission readily can establish one. ATSI knows of no reason to believe that "safe harbor" allocations are not simple and effective solutions to the intrastate/interstate revenue issue; and the proposals do not claim otherwise. Thus, the proposals' complaint that distinguishing interstate from other revenues now is "difficult if not impossible" is, at best, a gross exaggeration.[19]

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[18] *Id.* at ¶95, p. A-41.
[19] *Id.* at ¶97, p. A-42.

The real problem here, which the Attachments do not choose to highlight, is the extant ambiguity between "telecommunications services" (which clearly are subject to USF contribution assessments) and "information services" (which clearly are *not* subject to USF contribution assessments). Again, however, the underlying problem is *not* the USF contribution mechanism itself, but rather is the Commission's studied refusal – for unrelated regulatory purposes -- to classify particular services as "telecommunications" or as "information". The Commission may have very good reasons for failing to make this distinction clear, but it is plainly irrational to import that policy predilection into the USF debate and to bootstrap it into a justification for wholesale modification of the USF contribution methodology.

The legal analysis advanced by the Attachments is little better than their factual discussion. The Attachments entirely forget the fundamental principle reaffirmed in the Supreme Court's *Chevron* decision,[20] that the first inquiry in every case of agency implementation of its organic statute is to determine "whether Congress has directly spoken to the precise question at issue" and, if so, "that is the end of the matter" and the agency "must give effect to the unambiguously expressed intent of Congress."[21] To satisfy this requirement the agency must "giv[e] some substance" to the statutory provisions it is interpreting and failure to do so is error.[22]

That is exactly what the Commission did in the aftermath of the 1996 amendments adding Section 254 to the Communications Act, when it determined that USF contributions should be assessed on telecommunications providers based on their interstate and international end-user

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[20] *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed 2d 694 (1984).

[21] *Id.*, 467 U.S. at 842-843, 104 S. Ct. 2781. *Accord, e.g., American Mining Congress v. EPA*, 824 F.2d 1177, 1182 (DC Cir. 1987).

[22] *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 392, 119 S. Ct. 721, 736, 142 L. Ed. 2d 834 (1999) (FCC reversed for failing to "giv[e] some substance" to the "necessary" and "impair" statutory requirements for unbundling telephone network elements). Accordingly, whether or not the Commission separately has "plenary" authority over telephone numbers is besides the point.

telecommunications revenues.[23] Nonetheless, the Attachments would essentially ignore that history and contend, in substance, that times have changed and hence an entirely new system of the Commission's design and choosing should be implemented, without regard to implementing the Congressional directives in Section 254. That is *not,* however, the Commission's lawful role; if it believes that the Congressional design as expressed in Section 254 has become anachronistic, the proper remedy is not to ignore and rewrite the Congressional design but instead is to obtain appropriate revisions to Section 254 by Congress.

To the extent the Attachments do bow in the direction of Section 254, they do not even acknowledge, much less appropriately address, the proper scope of the principles contained in that section. The core requirement in Section 254(d) is that carriers providing interstate telecommunications services shall contribute to the USF "on an equitable and nondiscriminatory basis". From the outset, the Commission has held that this standard includes the requirement of "competitive neutrality".[24] Nonetheless, the discussion in the Attachments, to the extent it addresses the statutory standard at all, is confined to whether or not it is equitable for different entities to contribute or not, and does *not* address in any meaningful way whether relative contributions from different industry groups would be equitable and competitively neutral.[25]

It has long been accepted that relative usage of the interstate network is a reasonable proxy for equitable contributions, and it similarly has long been acknowledged that it is part of the "equitable and nondiscriminatory" standard that those who use the network more should make greater contributions to USF. The Attachments would throw this principle overboard without acknowledging it or explaining why it is no longer true.

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23 *In the Matter of Federal-State Joint Board on Universal Service* (Report and Order), CC Docket No. 96-45, 12 FCC Rcd 8776 (FCC 1997).

24 *Id.* at ¶¶843-848, 854.

25 Attachment A, ¶¶108, 113, 143-145.

Stating the point somewhat differently, facially equal treatment is both inequitable and discriminatory when the parties to whom such (facially equal) treatment is extended are not similarly situated. That is exactly the major flaw of a "numbers" approach to USF contributions, *viz.*, it affords superficially "equal" treatment to different groups that are not in fact similarly situated. The result is a contribution system that is neither "equitable" nor "nondiscriminatory".

It is also the case that a numbers-based contribution methodology, as applied to ATSI members and other non-carrier entities providing telemessaging service, plainly would violate the "competitive neutrality" component of the statutory "equitable and nondiscriminatory" standard. As explained in Appendix A, attached hereto and incorporated by reference, telephone companies use technologies generically referred to as "Simplified Message Desk Interface" or "SMDI" to identify their voice messaging subscriber calls with out-of-band signaling. SMDI does not work reliably for independent entities such as ATSI members, so they are forced to use "proxy" telephone numbers to accomplish the same function, which is why they must use such large quantities of telephone numbers in their operations.

All of these "proxy" telephone numbers used by ATSI members are "Assessable Numbers," at least under the "B" proposal, and thus would be assessed a monthly, per number USF contribution obligation. By contrast, those same charges would not apply to telephone company telemessaging services because of their ability to use SMDI. Given the relatively low monthly price of these services, anything approaching a $1.00 per month fee would create a substantial price advantage for the telephone company service. Under these circumstances, adopting a numbers-based USF contribution methodology would work an enormous competitive advantage in favor of telephone companies in the provision of telemessaging service, and would violate the "competitive neutrality" component of the "equitable and nondiscriminatory" standard of Section 254 of the Communications Act.

Finally, the Attachments trumpet the alleged benefits of their new contribution methodology without acknowledging, much less analyzing in any meaningful way, the increased regulatory *burdens* that the new methodology would entail. The Attachments concede, albeit rather euphemistically, that implementation of contributions based on "Assessable Numbers" means that certain "non-carrier entities that use telephone numbers in a manner that meets our definition of Assessable Numbers do not report NRUF data yet must [directly] contribute" to USF.[26] With contributor status, of course, also comes burdensome new regulatory reporting and payment obligations for those non-carrier entities.[27] While it may be the case that a handful of large and sophisticated telephone companies will have modestly simpler regulatory requirements under the new USF contribution methodology set forth in the Attachments, the Commission does not trouble to explain why it is in the public interest to lighten those requirements by inflicting onerous new regulatory burdens on non-carrier and heretofore non-direct contributor entities such as members of ATSI.

Nor is this omission merely a flaw in the Attachments' analysis. Rather, ATSI respectfully submits that it is also a clear violation of the Commission's obligation under the Regulatory Flexibility Act of 1980, as amended (the "RFA"),[28] to conduct a regulatory analysis of the impact of its rules on small businesses such as members of ATSI.[29] While the Attachments acknowledge that existing, unregulated businesses will be turned into direct contributors under its

[26] *Id.* at ¶128, p. A-55.
[27] *Id.* at ¶¶148-153, pp. A-65-A-67.
[28] 5 U.S.C. §§601-612.
[29] Appendix E to Attachment C is an Initial Regulatory Flexibility Act Analysis that presumably was intended to be attached to all of the proposals. No Final Regulatory Flexibility Act Analysis is attached to any of the proposals, however.

proposals assessing USF contributions on the basis of telephone numbers, they make no attempt whatsoever to identify or evaluate the scope of such action as required by the RFA.

Conclusion

Under all of these circumstances, ATSI respectfully submits that the Attachments utterly fail to justify adoption of any of the wholesale modifications to the existing USF contribution methodology set forth therein, and that consideration of any such modifications should not take place, if at all, until issues relating to the appropriate level of USF disbursements has been resolved and implemented, and the impact of intercarrier compensation reform on subscriber rates has been determined. Only then will the Commission be in a position to rationally determine whether and, if so, how the USF contribution methodology should be modified consistent with the requirements of Section 254. Moreover, at such time as the Commission appropriately determines that significant modification of the USF contribution methodology is in the public interest, the Commission should issue a specific proposal based on connections to the network for public review and comment, prior to deciding whether or not to adopt such new contribution methodology.

Respectfully submitted,

ASSOCIATION OF TELESERVICES
INTERNATIONAL, INC.

By: s/Dennis O'Hara
Dennis O'Hara, President

By: s/Brian D. Gilmore
Brian D. Gilmore, Chairman, Government
Government Relations Committee
of the Board of Directors
12 Academy Avenue
Atkinson, NH 03811

By: s/Kenneth E. Hardman
Kenneth E. Hardman
2154 Wisconsin Ave., NW Ste 250
Washington, DC 20007
Telephone: (202) 223-3772
Facsimile: (202) 315-3587
kenhardman@att.net

Attorney for Association of TeleServices International, Inc.

November 26, 2008

HOW PSCRCs USE "PROXY" TELEPHONE NUMBERS AND WHY SMDI DOES NOT WORK FOR COMPETITIVE TELEMESSAGERS

How PSCRCs [1] use "proxy" telephone numbers –
PSCRCs receive inbound calls redirected by subscribers using PSTN (Public Switched Telephone Network) Complementary Network Services (CNSs) such as Call Forwarding Variable. [2]

Inbound calls are delivered to the PSCRC on "proxy" telephone numbers provided by the PSCRC's telephone company for the purpose of signaling the identity of the subscriber's redirected telephone number. [3]

Each subscriber telephone number redirected to a PSCRC requires a minimum of one PSCRC telephone number to accurately identify the subscriber's redirected telephone number(s). [4]

PSCRC ACD (Automatic Call Distributor) systems use the signaling data provided by the telephone company to route calls to call center agents trained to assist callers for that subscriber. The signaling data are also used to display subscriber-unique information required by PSCRC agents to handle the call, and serve as an index to create billing records.

An alternative to the use of "proxy" telephone numbers –
Upon the entry of RBOCs into voice messaging,[5] the telephone industry developed alternative technologies to streamline the economics of identification of voice messaging subscriber calls redirected to telephone company voice messaging systems. These (and incremental successor) technologies are generically described as "Simplified Message Desk Interface" or "SMDI" technologies.

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[1] Private Sector Critical Response Center (PSCRC) call center agents handle emergency calls for government, not-for-profit, professional, healthcare and commercial entities.

[2] Callers dial the PSCRC subscriber's telephone number, not the "proxy" telephone number assigned by the PSCRC to receive calls redirected by the PSCRC subscriber. "Proxy" telephone numbers are never made public or dialed directly.

[3] The PSCRC's telephone company signals to the PSCRC the identity of the "proxy" telephone number assigned by the PSCRC, not the PSCRC subscriber's telephone number. Databases maintained by the PSCRC associate the "proxy" PSCRC telephone number with the PSCRC subscriber's telephone number.

[4] In many cases, multiple PSCRC telephone numbers are required to serve each PSCRC subscriber because: PSCRC subscribers often receive emergency calls on multiple telephone numbers, calls to each must be redirected to the PSCRC with identification, and because varying conditions which result in redirected calls must be accurately signaled to PSCRC personnel.

[5] The competitive dangers inherent in RBOC entry into the telemessaging business was recognized by Congress, which incorporated competitive safeguards into Section 260 of the Communications Act.

SMDI technologies permit RBOC voice messaging systems to identify voice messaging subscribers' redirected telephone numbers with out-of-band signaling.[6] As a result, RBOC voice messaging systems typically require a fraction of the quantity of telephone numbers required by independent telemessaging competitors such as traditional telephone answering services.

In some cases, tens of thousands of voice messaging subscribers' telephone numbers (within a single network) can be redirected to a single telephone number and identified at a success rate acceptable for automated voice messaging applications.

SMDI fails competitive telemessagers [7]…

ATSI, recognizing the challenge to the traditional telephone answering service (TAS) business model posed by "captive" RBOC voice messaging, collaborated with the telecom industry in an attempt to adapt SMDI technology so that it could also be used by competitive telemessagers.[8]

In today's world of intermodal voice telephony competition, PSCRCs trialing SMDI technologies report a dramatic rate of failure. Telephone companies do not consistently and reliably deliver all required SMDI data to PSCRCs.

These attempts by ATSI and PSCRC ACD vendors to improve PSCRC telephone number efficiency have, to date, proven unsuccessful.[9] In the estimation of those who've participated in trials and limited rollouts of SMDI technologies in PSCRCs, SMDI has not been widely accepted by the industry because the SMDI data delivered by telephone companies to PSCRCs is too often insufficient to accurately identify subscribers' redirected telephone numbers.

Where the fault lies – with the telephone company serving the PSCRC subscriber, with the telephone company serving the PSCRC, with intermediate parties, with the application of legacy signaling protocols deployed in an environment of intermodal competition, or with PSTN infrastructure vendors – is an inscrutable question for PSCRCs. PSCRC ACD vendors can prove their systems function flawlessly, but their ACDs and related systems can only operate on SMDI data if it arrives intact and complete.

[6] Other telephone companies, including CLECs and wireless telephone companies also use SMDI technologies within their circuit switched voice networks.

[7] Telemessagers provide telemessaging services. Telemessaging service is defined at 47 U.S.C. 260(c): "...the term `telemessaging service' means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services."

[8] This work was an outgrowth of previous Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) efforts and was largely accomplished through coordination within the Exchange Carriers Standards Association's (ECSA) Information Industry Liaison Council (IILC) and successor technical standards bodies. IILC Issue #028, Inter-Switch SMDI, was adopted by the IILC on April 23, 1992.

[9] Telemessagers are incentivized to adopt SMDI technologies through reduced operating costs associated with use of fewer telephone numbers.

… but works for "captive" voice messaging providers…
Telephone company voice messaging operations are not similarly disadvantaged in their use of SMDI technologies for several reasons.

These "captive" voice messaging operations typically only serve subscribers of their associated telephone company. Their limited mandate awards important advantages to "captive" telemessagers - the networks of the "captive" voice messaging operation and the associated telephone company are well known, under common control, and can be finely-tuned for optimum inter-operability.

Employees of "captive" voice messaging operations and their associated telephone company tasked with ordering the Complementary Network Services on the associated telephone company's network can easily ensure that the joint customer's Basic Serving Arrangement (BSA) is properly configured to facilitate correct operation and delivery of SMDI data. The same benefit accrues to the "captive" voice messaging provider, the associated telephone company and the joint customer when the joint customer's BSA is reconfigured or moved.

…and the reasons are obvious –
By contrast, the subscriber base of competitive telemessaging providers such as PSCRCs is composed of telephone customers of every telephone company in every local market around the country. PSCRC subscribers' Telecom Service Providers include Incumbent Local Exchange Carriers (ILECs), Competitive Local Exchange Carriers (CLECs), cellular and PCS wireless telephone companies as well as Interconnected VoIP Providers. This heterogeneous mix of competing voice telephone service providers seemingly presents many challenges to the free flow of the SMDI signaling data required to support competitive telemessaging.

None of the above-described benefits enjoyed by "captive" voice messaging providers also accrue to competitive telemessagers. PSCRCs must, instead, master intricacies of the increasingly opaque variety of networks that comprise the intermodal PSTN. PSCRCs bear unique burdens to create internal knowledge bases and facilitate training, engage in fact-finding and analysis of subscribers' serving arrangements, maintain current documentation of PSCRC subscribers' BSAs and perform troubleshooting – all at a significant disadvantage to providers of "captive" telemessaging.

A lack of incentives for telephone companies to support competitive telemessagers –
Because the financial interests of the "captive" voice messaging provider and the associated telephone company are well aligned, there is a significant incentive for the associated telephone company to take all necessary measures to support the "captive" voice messaging provider and deliver robust SMDI data on a reliable basis.

At the same time, there is a lack of incentives for PSCRC subscribers' telephone companies to support competitive telemessaging and reliably deliver robust SMDI data. PSCRC subscribers are often not customers of their PSCRC's telephone company.

In the era of traditional telephone answering services (TASs), RBOCs were financially incentivized to support TASs to increase call completion revenue. Those financial incentives are largely extinct and apparently no longer motivate telephone companies to support competitive telemessaging.

PSCRCs cannot rely on SMDI technologies; PSCRCs must use "proxy" telephone numbers –
Because PSCRCs often handle critical calls including those involving the life and safety of callers, the failure of telephone companies to consistently and reliably deliver required SMDI data places the life and safety of callers and others at risk. [10]

As a result, few PSCRCs have experimented with or adopted SMDI technologies. Instead, PSCRCs will require the use of "proxy" telephone numbers for the purpose of consistently and reliably signaling the correlated identity of subscribers' redirected telephone numbers for the foreseeable future.

PSCRCs and PSCRC subscribers require "bullet-proof" identification of redirected subscriber telephone numbers. "Proxy" telephone numbers, deployed as network addresses for the delivery of redirected calls, constitute the only proven, reliable and available means of identification.

[10] PSCRCs and subscribers are also exposed to increased potential liability when redirected calls cannot be properly identified due to incomplete or missing SMDI data.